

Tax Alert

Keeping you informed

September 2011

Update on currently proposed tax changes



Draft Decrees on CIT, VAT and SST

A massive change

The Ministry of Finance (“MoF”) is now working to amend prevailing Decrees on Corporate Income Tax (“CIT”) covering Foreign Contractor Withholding Tax (“FCWT”), Value Added Tax (“VAT”), and Special Sales Tax (“SST”). The draft Decrees have recently been made public by the MoF for discussion purposes. They will be proposed to the Government for consideration and expected to come into force from 2012.

In general, these draft Decrees have been revised to be more compatible with practical business activities and more consistent with various regulations and rulings under laws which have been issued over the last 2 years by the MoF, and the General Department of Taxation.

To help you be aware of the upcoming tax trends, noteworthy **new points** in the draft Decrees are highlighted below. These will be subject to further changes upon the Government’s official release.

1. Corporate Income Tax

Besides recognizing practical issues which have been guided in recent lower-level legal instruments and rulings (e.g. reversal of provisions, income from asset disposal, etc.), the draft Decree on CIT also introduced some **critical changes** as follows:

Non-deductible expenses:

- Amortization of brand name, trade mark, and commercial name as paid-in capital contribution;
- Interest amount of the borrowings portion exceeding **5** times of the charter capital;
- Provision for severance allowance; and
- Bonus and life insurance costs for employees **without** entitlement conditions and levels set out in employment-related and/or certain corporate documents.

Deductible expenses:

- Unrealized losses from revaluation of year-end liabilities balances nominated in foreign currencies are now formalized at the Decree level;
- Commission paying to agents/distributors under multi-level marketing model; and

- Life-insurance for employees if the entitlement conditions and levels are set out in employment-related and/or certain corporate documents;

Taxable income:

- Unrealized gains from revaluation of year-end liabilities balances nominated in foreign currencies are now formalized at the Decree level;
- Payables overdue more than 3 years and not yet paid;
- Difference due to revaluation of fixed assets for capital contribution has to be included in other income in the tax period where it happened. However, the revaluation of land use rights for capital contribution could be allocated within 10 years;
- Gains from capital assignment not under form of cash, including shares, bonds, certificate of investment fund; and
- Gains from swap shares under capital assignment transactions.

Tax exemption:

- Income from transferring Certified Emission Reductions (CERs) within 01 year from the date of issuance.

Tax incentive:

- No CIT incentives for income from provision of any service subject to SST;
- Taxpayers who will be withdrawn tax incentives by end of 2011 per WTO commitment can continuously enjoy tax incentives where certain tax incentive conditions in accordance with regulations introduced the time of its investment license granted OR the regulations applying from 1 January 2012 going forward are met; and

This tax incentive regime is not granted automatically, but requires taxpayers to make notification to relevant tax authorities on their tax incentive option.

Withholding tax rates for non-resident foreign contractors:

- Except for lease of platform, machinery and equipment, vehicles which are still subject to 5% CIT, CIT deemed rate for services is worriedly to be **doubled** from 5% to **10%**;
- Interest's current 10% withholding is proposed to be **halved** to **5%** in normal case, and 2% in special cases;
- Supply of goods under pure trading conditions and/or under commercial term of Delivery At Terminal (DAT) or Delivery At Place (DAP) without supporting services including installation, testing, maintenance or replacement services is drafted to be CIT-free. Of note, DAT and DAP are new terms under Incoterms 2010 and replace other "D" terms, including DAF, DES, DEQ and DDU as previously used in Incoterms 2000;
- 2% withholding rate on income from reinsurance business is proposed to be lowered to 0.1%;
- Income from financial derivative services is confirmed to be taxed at 2%.

2. Value Added Tax

Cases are not subject to output VAT:

- Goods and services provided outside Vietnam by Vietnamese tax payers. In mix case, any portion of service performed in Vietnam shall be subject to VAT;
- Income from compensation for contract cancellation or bonus for early contract completion; financial support and similar financial income not resulting from sales-purchases of goods and services in Vietnam; Income from transfer of CERs;
- Purchases of goods and services from foreign company who does not have permanent establishment in Vietnam, or from individual who is not tax-resident of Vietnam; including advertising and marketing; promoting investment and trade; brokering the sales of goods; training; sharing of postal service charges, international telecommunications between Vietnam and other countries where the service is performed outside Vietnam; and
- Asset liquidation of non-business organizations/individuals who are not VAT taxpayers.

VAT exempt cases:

- Most of common insurance types for humanity, agricultural activities; and reinsurance;
- Lender's sale of assets held as collateral except when such assets have belonged to the lender;
- Debt factoring;
- Management of securities investment companies, services related to securities registered, deposited in Vietnam Securities Depository Center, lending for deposit transaction, advance money from selling securities;
- Capital assignment by way of transfer of project, transfer of rights to develop/implement project or to contribute capital into a project; and
- Foreign currency swaps.

Claim input VAT:

- Input VAT of goods and services for the supply of goods and services outside of Vietnam;
- Input VAT paid at importation, input VAT of investment stage could still be creditable after the 06-month in the event of force majeure;
- Input VAT related to damage goods will be creditable; and
- Input VAT of goods and services purchased by way of authorizing other entity and that the VAT invoices are issued under name of such authorized entity. Applicable cases shall be guided further by the MoF.

Condition for 0% VAT of exports

- Third party's confirmation can replace for the bank payment voucher for 0% VAT of exported goods in case the foreign buyer goes bankrupt/ the goods destroyed at the border gate of the import country/the goods lost or damaged due to objective reasons during transport outside of Vietnam.

Tax refund for foreigner

- Foreigners who purchase goods in Vietnam and bring them outside Vietnam may get VAT refund of the goods when exist from Vietnam.

3. Special Sales Tax

- Cars specifically designed for special usage, or cars that are not registered to travel on road are not subject to SST;
- SST paid for raw materials imported or purchased directly from domestic producers to produce non-SST goods is entitled to SST refund.
- SST of materials paid at importation or paid for local suppliers could be offset with SST payable for amount corresponding with materials consumed for the goods sold.
- SST-able price in case of franchising, commission, golf activities, and cars is specified as follows:

No.	Business type	SST-able price
1.	Producer selling goods via its agent, who re-sell at price setting by the producer to get commission.	<ul style="list-style-type: none">▪ Commission: exclusive in selling price set by the producer; and▪ SST-able price cannot be less than 90% of the average selling price of the agent.
2.	Goods produced under the licensed agreement with an overseas owner of goods trademark/brand/production technologies, then delivered to the overseas party's branch/representative in Vietnam.	<ul style="list-style-type: none">▪ Selling price of the overseas party's branch/representative in Vietnam
3.	Golf business	<ul style="list-style-type: none">▪ Golf-practicing tickets, buggy fees, caddy fees are subject to SST.▪ No SST is imposed on goods/

		<p>services not liable to SST, e.g. hotels, catering, sale of goods or games.</p> <ul style="list-style-type: none">▪ In case a deposit is returned to the depositor, related SST paid could be offset against SST payable or refunded.
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We shall keep you posted should there be further development in this regard.



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